

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

WRIT PETITION NO. 4407 OF 2005

PETITIONER

PLAINTIFF

Parmeshwar S/o Late Pancham Gond
by caste Gond, aged about 46 years,
occupation agriculturist, resident of
Village Khalpodi Tahsil Lundra,
District Surguja (CG).

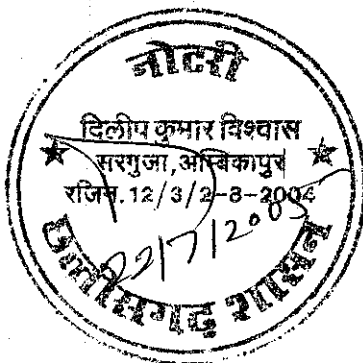
VERSUS

RESPONDENTS:

DEFENDANTS

1. Trilochan S/o Late Mittu Gond,
aged 60 years. ~~Ramkishan Saha~~ 16/8/05
2. Hira Sai S/o Late Mittu Gond,
aged about 45 years.
3. Teju S/o Lallan Gond, aged about
30 year. All are agriculturist and
resident of Khalpodi, Tahsil
Lundra, District Surguja (CG).
4. Bundo D/o Lallan Gond, aged
about 28 years, occupation
agriculturist, resident of Village
Dhamdhapur, Tahsil Rajpur,
District Surguja (CG).
5. Majhino D/o Lallan Gond, aged
about 25 years, occupation
agriculturist, resident of village
Karra, Mahuwapara, Tahsil
Lundra, District Surguja (CG).
6. State of Chhattisgarh, through
Collector Surguja (CG).
~~Pandari Tarai, Raipur, Tahsil and~~
~~District Raipur (CG).~~ 16/8/05

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(2) (4)

WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OR
WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS
UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE

मामला क्रमांक WP 4407/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
१६-९-२००५	<u>16.9.2005</u> Shri Sunil Triapathi, counsel for the petitioner. The petitioner has preferred this petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 12.5.2005 (Annexure P-11) passed by learned 2nd Civil Judge, Class-II, Ambikapur in Civil Suit No.36A/05 whereby learned Civil Judge has rejected the application of the petitioner filed under Section 151 of the CPC. I have heard learned counsel for the petitioner and perused the impugned order. Perusal of impugned order shows that respondent Nos.2, 4 & 5 moved the application and affidavits before the court below stating that original written statement & Vakalatnama does not bear their thumb impression. Thereafter, they have filed another affidavit stating that original written statement bears their thumb impression, whereas, the affidavits and application filed by them later on were incorrect, as the plaintiff has obtained their thumb impression keeping them in dark and taking advantage of their illiteracy. The trial court rejected the application filed by the petitioner herein on the ground that defendant Nos.2, 4 & 5 have admitted that the earlier Vakalatnama and written statement bears their thumb impression. Counsel for the petitioner submits that respondent Nos.2, 4 & 5 are taking somersault and they are changing their stand, therefore, the trial court ought to have conducted the enquiry and taken action against them.	

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In reply to the application filed by the petitioner under Section 151 of the CPC, the respondent Nos.2, 4 & 5 have stated that the petitioner herein obtained their thumb impression on the second affidavits keeping them in dark and taking advantage of their illiteracy. Now the question remains that in order to ascertain whether the plaintiff/petitioner herein obtained the thumb impression of respondent Nos.2, 4, & 5 after keeping them in dark or not, is a question of fact which requires enquiry. Counsel for the petitioner submits that since this a serious matter and the respondents are changing their stand in a judicial proceedings, in such circumstances, the trial Court ought to have conducted the enquiry and pass the appropriate order. It is true that in a judicial proceeding filing of affidavit and thereafter filing an affidavit controverting the earlier affidavit is a serious matter. Learned trial court is required to ascertain the fact whether the second affidavit filed by respondent Nos.2, 4 & 5 was in fact prepared by the plaintiff and he obtained the thumb impression of the respondents keeping them in dark and taking advantage of their illiteracy. After conducting enquiry, the trial court should pass appropriate order in accordance with law at the time of final disposal of the suit. With the direction aforesaid, the petition stands disposed of. Consequently, M.(W.)P. No.3581/05 and I.A. No.7956/05 also stand disposed of.	
		Sd/- L.C.BHADOO Judge

Roshan
30/9/05